IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WA.No. 260 of 2006()

AGAINST THE JUDGEMENT/ORDER IN OP.10141/2000 Dated 06/10/2005
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APPELLANT:
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1. UNION OF INDIA, REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI.

2. THE PAY AND ACCOUNT OFFICER, CENTRAL PENSION ACCOUNTING OFFICE, MINISTRY OF FINANCE GOVT. OF INDIA, TRIKOOLT-2, COMPLEX (BEHIND HOTEL BYATT REGENCY) BHIKAJI COMA PLACE, NEW DELHI-110 066.

3. THE DIRECTOR GENERAL, BORDER SECURITY FORCE, DIRECTORATE GENERAL BSF M.QS., BLOCK NO.10, C.G.O.COMPLEX, NEW DELHI.

BY ADV. SRI.JAYAPRADEEP. V., ADDL.CGSC

RESPONDENTS: PETITIONER

P.K.THANKAPPAN, S/O.PUTHENKUMRAN, PULLIYIL HOUSE, KUMBLANGHI.P.O, KOCHI-7.

BY ADV.SRI.P.J.JOSEPH
SRI.GEORGE MATHEW

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05/03/2007, ALONG WITH WA NO.1304 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.
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W.A. NOS.OF 260 & 1304 OF 2006
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Dated this the 5th day of March, 2007

J U D G M E N T

P.R.Raman, J.

Union of India and others are the appellants. Respondent in W.A.260/2006, an ex-member of BSF, proceeded on voluntary retirement after completion of 25 years and 4 months of service. In W.A. 1304/06, the respondent proceeded on voluntary retirement after completion of 26 years, 9 months and 22 days. The contention of the respondents were that the qualifying service for calculation of pension is 30 years instead of 33 years. This contention was accepted by the learned Single Judge following the decision in **Reghu Nandan Lal Choudhari v. Union of India (AIR 1998 SC 2125).** Impugning that judgment, present writ appeals are filed. Annexure A1 produced in both the cases, is a judgment in a batch of civil appeals by the Apex Court, wherein the Apex Court has referred to Reghu Nandan Lal Chaudhary and Others V. Union of India and held that various High Courts have since been blindly following the said

judgment as having laid down that in all cases where a person has retired on superannuation or retired at the age of 55 years, the qualifying service should be 30 years. Since the correctness of the decision in Reghu Nandan Lal Chaudhary was doubted, the Division Bench of the Apex Court referred to a larger Bench and that is how all these came before larger Bench.

2. After considering the decision in Reghu Nandan Lal Chaudhary's case, it was held that the said decision does not lay down any proposition of law and that there is no reasoning in that case and there is no reference to any Rule or to any other provision which would govern payment of pension. Thus the observations in Reghu Nandan's case must be confined to that case only. They cannot be used to give benefit to all. It was therefore held that it is an admitted position that Rule 49 governs in all these cases. Payment could only be as per the Rules. In the absence of any challenge to the Rule, there is no ground of discrimination in any of the petitions, the Rule cannot be bypassed and all the Judgments of the High Courts are therefore held unsustainable.

3. In the present case also, in the absence of any

challenge to Rule as stated, the dictum laid down in Annexure A1 judgment holds the field. As a matter of fact, the view expressed by the learned Single Judge and confirmed in W.A.1761/2000 in a similar case itself was under challenge in the batch of cases before the Apex Court. In the result, following the judgment of the Apex Court in **Union of India and Another v. Satish Kumar and Others(**Annexure A1), these appeals are allowed. The judgment of the learned Single Judge is set aside. Following the observations in the last para of the judgment of the Apex Court, we direct that the payments, if any made shall not be recovered.

Writ appeals are allowed to the above extent.

P.R.RAMAN, JUDGE

ANTONY DOMINIC, JUDGE

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